



Roger Goodspeed
General Attorney
Law & Regulation

April 11, 1996

APR 11 1996

APR 11 1996

Hand Deliver

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222 - Stop Code: 1170
Washington, DC 20554

Dear Mr. Caton:

On behalf of Capital Cities/ABC, Inc., transmitted herewith for filing with the Commission are an original and eleven copies of its Reply Comments in CS Docket No. 96-46.

If there are any questions in connection with the foregoing, please contact the undersigned.

Very truly yours,

Roger Goodspeed

RG/ak
Enclosures

Number of Copies made
11

0+11

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

APR 11 1996

In the Matter of)
)
Implementation of Section 302)
of the Telecommunications Act)
of 1996)
)
Open Video Systems)

CS Docket No. 96-46

DOCKET FILE COPY ORIGINAL

In the Matter of)
)
Telephone Company-Cable)
Television Cross-Ownership)
Rules, Sections 63.54-63.58)

CC Docket No. 87-266 (Terminated)

To: The Commission

REPLY COMMENTS OF CAPITAL CITIES/ABC, INC.

Capital Cities/ABC, Inc. files these Reply Comments primarily to respond to the comments of US West, Inc. with respect to the implementation of retransmission consent. US West argues that broadcasters should have a single must-carry/retransmission consent election with respect to the OVS operator and competing cable systems in its service area.¹

The US West implementation scheme is both contrary to section 325(b) of the Communications Act and flawed as a matter of policy because it would suppress competition between OVS operators and competing cable systems.

¹ US West Comments at 20.

Section 325(b)(1) applies the retransmission consent obligation to all MVPD's. This includes cable operators, OVS programmers and unaffiliated MVPD's on OVS systems. In contradistinction to section 325(b)(1), section 325(b)(3)(B) applies the single election only to cases in which there is "more than one cable system which services the same geographic area." Thus, the single election is limited by the statute to cable overbuild situations.

The legislative history of the Telecommunications Act is clear that the quid pro quo for reduced regulatory burdens enjoyed by telephone companies under the OVS model is the obligation to deploy truly "open" systems that will introduce "vigorous competition" in the video marketplace.² This competition policy would surely be defeated if broadcasters were precluded from negotiating separately with competing OVS and cable distributors about the terms and conditions of the carriage of programming, including whether to exercise must carry and the terms on which the broadcaster would be amenable to granting retransmission consent.

In discussing OVS/cable competition, US West distorts the effect of a separate election by characterizing the broadcaster position as one of "unfair leveraging." In fact, all that "leveraging" means in the context of broadcaster negotiations with competing video distributors is that competition will be injected in the process -- the precise goal the Telecommunications Act was

² Telecommunications Act of 1996 Conference Report, H.R. Rep. 104-458 at 178. See also Notice, par. 4.

designed to achieve. If the broadcaster decides to exercise retransmission consent with respect to both distributors, there is unrestricted competition in negotiating the terms of the retransmission consent contracts. US West does not argue to the contrary. Competition would likewise be enhanced by allowing the broadcaster to exercise separate elections for different distributors. OVS is a new and different form of video distribution from cable. As such, it offers different commercial opportunities for both OVS operators and broadcasters. Both should have the freedom to assess those commercial opportunities and to take them into account in setting their negotiating strategies. Foreclosing the separate election strategy would constitute government interference in a free market process which would have the effect of reducing competition. US West offers no persuasive reason why this would not be true.

Respectfully submitted,

By: 

Sam Antar
Vice President, Law & Regulation

Roger C. Goodspeed
General Attorney, Law & Regulation

Capital Cities/ABC, Inc.
77 West 66th Street
New York, New York 10023

Counsel for Capital Cities/ABC, Inc.

April 11, 1996